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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 687

FRED CHANDLER, SR., *et al.*, *Petitioners*

v.

W. LEWIS DAVID, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

ASHLEY SELLERS
JOHN D. CONNER
GEORGE C. DAVIS
1625 K Street, N.W.
Washington, D. C. 20006
Counsel for Petitioners

MAURICE R. BULLOCK
P. O. Box 1726
Midland, Texas 79701
Of Counsel

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Petitioners, Fred Chandler, Sr., *et al.*,[1] pray that a writ of certiorari issue to review the judgment of

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[1] The petitioners are: (a) Fred Chandler, Sr. and Fred Chandler, Jr.; and (b) Cecil E. Brown, A. H. Crawford, A. N. Easley, Vernon Fletcher, Woodrow Gum, J. R. Kenney, Jack H. Kenney, Paul Kenney, Walter S. Kenney, Hubert Kephart, Vernon McLaughlin, L. M. Stout, Jack D. Warner, and Vance Kenney.

The respondents are: W. Lewis David, as Texas State Director, Agricultural Stabilization and Commodity Service (A.S.C.S.), United States Department of Agriculture, Dee Wilson, Dick Guest and C. L. Bell, as Members of the Culberson County, Texas, A.S.C.S. Committee; Ralph T. Price, George O. Duncan, James E. Goad, James F. Moore, Weber Pool, and John E. Hutchinson, as Members of the Texas State A.S.C.S. Committee.

the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on July 28, 1965.

OPINION BELOW

The opinion of the court below (Appendix A, *infra*, pp. A1-17)[2] is, at present, unreported. The opinion of the District Court for the Western District of Texas (Appendix B, *infra*, pp. A21-78), upholding the unreported Findings of Fact and Determination of the Agricultural Stabilization and Commodity Service Review Committee (Appendix C, *infra*, pp. A79-97), is reported at 219 F. Supp. 801.

JURISDICTION

The judgment of the court below (Appendix A(1), *infra*, p. A19) was entered on July 28, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Whether farm owners engaged in the production of cotton, under valid and subsisting crop acreage allotments, are entitled to transfer such allotments, pursuant to 7 U.S.C. § 1378, to other farm land owned by them when the land to which such allotments were originally assigned is taken by eminent domain action of the Federal Government.

2. Whether the Secretary of Agriculture validly may, by administrative regulation (Amendment 11 to 7 C.F.R. § 719.12), impose conditions upon the transfer of cotton acreage allotments which prevent farmers from transferring such allotments from land con-

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[2] All of the appendices to this Petition are bound under a separate cover.

demned by the Federal Government to other land owned by them.

STATUTES AND REGULATIONS INVOLVED

The Federal statutes and regulations involved in this case are collected in Appendix D, *infra*, pp. A117-131.

Of focal concern are the following portions of the statute and regulation with which this case primarily is concerned:

7 U.S.C. § 1378(a)[3]

> Notwithstanding any other provision of this chapter, the allotment determined for any commodity for any land from which the owner is displaced because of the acquisition of the land for any purpose, other than for the continued production of alloted crops, by any Federal, State, or other agency having the right of eminent domain *shall* be placed in an allotment pool and *shall* be available only for use in providing allotments for other farms owned by the owner so displaced. Upon application to the county committee, within three years after the date of such displacement, * * * *any owner so displaced shall be entitled to have established for other farms owned by him* allotments which are comparable with the allotments determined for other farms in the same area * * * (emphasis supplied.)

Amendment 11[4]

> Upon written application * * *, the county committee shall determine whether the transaction by

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[3] Section 378, Agricultural Adjustment Act of 1938, Act of August 28, 1958, P.L. 85-836, Title V, Sec. 501, 72 Stat. 995 (Appendix D(1), *infra*, pp. A117-119).

[4] Amendment 11 to 7 C.F.R. § 719.12, February 16, 1961, 26 F.R. 1396 (Appendix D(2), *infra*, pp. A121-124).

which the displaced owner claims to have acquired the farm to which it is requested that the allotment be transferred and the requested transfer is for the purpose of reestablishing the farming operations of the displaced owner or is a scheme or device to sell the allotment or to transfer the allotment for the benefit of some person other than the displaced owner. The application for transfer shall contain a certification by the applicant that he has made no side agreement with any person for the purpose of obtaining an allotment from the allotment pool for a person other than himself.
* * *

STATEMENT

A. The Statutory and Regulatory Program

This case concerns the administration of the Agricultural Adjustment Act of 1938, *supra,* note 3 (hereinafter referred to as the Act). The purposes and essential procedures of the Act are reviewed in the opinion of the District Court (Appendix B, *infra,* pp. A21-78).

The Act does not directly prohibit the transfer of an allotment apart from the land. However, the Act similarly does not authorize the transfer of acreage allotments, apart from the land, except in the following instances: (1) where, because of a natural disaster, cotton cannot be planted; and (2) where the land to which the allotment pertains has been condemned through governmental exercise of the power of eminent domain (7 U.S.C. § 1378). This case arises out of the Secretary's application of the latter exception.

The Act is silent with respect to a farmer's right to lease land to which an allotment pertains. However, the parties agree, and the court below concurred (Ap-

pendix A, *infra*, p. A8), that acreage allotments may be utilized by the lessee of the land to which they pertain.

The Secretary has been authorized by Congress to

> * * * make such regulations as are necessary relating to the selection and exercise of the functions of the respective [A.S.C.S.] committees, and to the administration, through such committees, of such programs. [16 U.S.C. § 590h(b)].

One "such program" is the Agricultural Adjustment Act of 1938, *supra*, note 3.

The Secretary has promulgated regulations comprehensively governing the administration of the cotton allotment and marketing quota provisions of the Act (See 7 C.F.R. Ch. VII). Petitioners challenge the validity of that portion of the Secretary's regulations which governs the transfer of cotton allotments from condemned land to other land owned by displaced cotton farmers (Amendment 11 to 7 C.F.R. § 719.12, Appendix D(2) *infra*, pp. A121-124 quoted in disputed part, *supra*, p. 3).

Pursuant to 7 C.F.R. § 719.12, when an allottee's land is condemned for a purpose other than continued farming, his allotment is reserved to him for a period of time. He may apply to his country A.S.C.S. committee for transfer of the allotment into an allotment "pool" wherein the allotment is reserved for a period of three years for transfer to another farm owned by him.[5] During the three-year period, the displaced

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[5] As originally promulgated, shortly following enactment of 7 U.S.C. § 1378, this regulation, like 7 U.S.C. § 1378 contained no substantive requirement other than the displaced farmer's ownership of the land to which the allotment is sought to be transferred. As amended by Amendment 11, the regulation imposed other substantive requirements, the latter being the subject of this case. 7 C.F.R. § 719.12 has been amended since the inception of this case and, as so amended, is now contained in 7 C.F.R. § 719.11.

farmer may apply to the county committee having jurisdiction over the land to which the allotment is sought to be transferred for a transfer of the allotment out of the pool to such land.

B. Statement of Facts

In 1958, the United States Department of Interior condemned certain land in Custer County, Oklahoma, including cotton farm land, owned by the displaced farmers and having acreage allotments and marketing quotas.[6] The displaced farmers transferred their allotments to the allotment pool.

In the Spring of 1960 Fred Chandler, Sr., a Culberson County, Texas cotton farmer, met with the petitioning displaced farmers. It became apparent that the Chandlers and the displaced farmers, respectively, held mutually dependent essential "ingredients" in a prospective cotton farming operation. The displaced farmers possessed the right to transfer cotton acreage allotments to other land which they might acquire but, at that time, they lacked ownership of such land. The Chandlers owned unimproved land suitable for cotton farming in conjunction with their established cotton farming operations, but lacked acreage allotments authorizing cotton production on such unimproved land.

In order to enable the displaced farmers and the Chandlers to realize the economic potential of their respective "ingredients" the Chandlers deeded to the displaced farmers, by duly recorded warranty deeds,

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[6] For convenient identification, the petitioners named *supra*, p. 1, footnote 1(b) hereinafter are referred to as "the displaced farmers."

sufficient land to support the transferrable acreage allotments, in consideration of the displaced farmers agreements, incorporated in the deeds, to assume an existing indebtedness on the land and to pay the Chandlers for the stated cost of clearing the land (R. 163, 186, 468; a typical deed is included in the Record at p. 549). The deeds contain no right of recision or reversion (R. 515-518).

Following execution of the deeds, the displaced farmers executed leases granting the Chandlers a 20-year leasehold interest in the land to enable the Chandlers to farm cotton on the land (R. 297; a typical lease is included in the record at p. 555).

The displaced farmers benefitted from the transaction, in that, each farmer would receive the stated rental for his newly acquired land and, at the end of the lease term, each would obtain possession of the land together with any fixtures and improvements added by the Chandlers (R. 288-299, 505-506).

Each displaced farmer applied to the Culberson County A.S.C.S. Committee (hereinafter referred to as the County Committee) for transfer of his pooled cotton allotments to the land purchased from the Chandlers (R. 557-559).

Beginning on February 17, 1961, following the displaced farmers' appearance before it, the County Committee approved the requested transfers and issued acreage allotments and marketing quotas to the Chandlers as lessee-operators of the involved lands (R. 560). The actions of the County Committee were reviewed and approved by the Texas State A.S.C.S. Committee. (A typical notice of approval is included in the Record at p. 560.)

Following approval of the transfers, the Chandlers produced and marketed a 1961 cotton crop on the lands, leased from the displaced farmers.

In the Summer of 1961, the United States Department of Agriculture commenced an investigation of all allotment transfers pursuant to 7 U.S.C. § 1378, including the transfers involved in this case.

On April 26, 1962, the A.S.C.S. Administrator directed the County Committee to cancel the allotments it had previously transferred at the request of the displaced farmers, advising the Committee that his investigation had disclosed certain unspecified "irregularities." On April 27, 1962, the County Committee, without any independent inquiry as to the merits, executed the Administrator's directive and retroactively cancelled the transferred allotments (R. 562, 566). Subsequently, over-production penalties were assessed against cotton produced by the Chandlers on land subject to the cancelled allotments (R. 48-49).

C. Proceedings Before the A.S.C.S. Review Committee

Pursuant to 7 U.S.C. § 1363, the petitioners perfected timely appeals to an A.S.C.S. Review Committee composed of three local farmers appointed by authority of the Secretary (R. 48).

On September 12-14, 1962, the appeals were heard by the Review Committee. On September 27, 1962, the Findings of Fact and Determinations of the Review Committee (Appendix E, *infra,* pp. A79-116) were entered, a majority of the Review Committee determining that the allotments had properly been cancelled.

D. Proceedings in the U.S. District Court, W.D. Texas

On August 23, 1962, while petitioners' appeals to the Review Committee were pending, but before the Review Committee had been designated, petitioners filed Civil Action 2438, seeking to enjoin the County Committee, *et al.*, from taking any action to enforce the assessed over-production penalties, and from withholding 1962 acreage allotments from the displaced farmers (R. 6-31). The court issued a temporary injunction enjoining the enforcement of penalties pending determination by the Review Committee.

On October 17, 1962, petitioners filed Civil Action 2451, seeking, in the alternative, to have the cancellation of the allotments by the A.S.C.S. Administrator declared illegal and beyond the jurisdiction of the Review Committee, or, in the alternative, to have the court review the determination of the Review Committee pursuant to 7 U.S.C. § 1365.

By order of the court, Civil Action 2451 and 2438 were consolidated into one Civil Action designated as Civil Action No. 2438.

On July 19, 1963, the District Court rendered its judgment and opinion upholding the jurisdiction and determination of the Review Committee (Appendix B, *infra*, pp. A21-78).

E. Proceedings in the Court Below

In briefs and oral argument before the court below, petitioners *inter alia* contended:

1. That the displaced farmers are entitled, pursuant to 7 U.S.C. § 1378, to transfer their allotments to any other farm land owned by them, and, by the undisputed facts of record, the displaced farmers are the

legal owners of the lands to which they sought to transfer their allotments; and

2. That, having complied with 7 U.S.C. § 1378, the displaced farmers are entitled to transfer their allotments, notwithstanding their compliance or lack of compliance with any variant substantive criteria sought to be superimposed upon the transfer of allotments by the Secretary since such action by the Secretary constitutes an illegal attempt to legislate.

The court below affirmed, upholding Amendment 11 as being consistent with the language and purpose of 7 U.S.C. § 1378 (Appendix A, *infra,* pp. A7-9). In substance, the court regarded Amendment 11 as a proper definition of the term "farm owned" (7 U.S.C. § 1378) based upon the court's conclusion that Congress, in using that term, intended to restrict the right to transfer allotments to displaced allottees who will reestablish farming operations and derive all benefit from the transfer. *Ibid.*

REASONS FOR GRANTING THE WRIT

The decision below leaves the displaced farmers holding title to cotton farm land upon which cotton may not legally be produced and voids their cotton allotments. The decision misconceives the legitimate economic interest of displaced allottees to transfer their allotments without requiring them personally to conduct cotton farming operations on the new land. The decision below warrants review not merely for these reasons but primarily because it, under the guise of upholding the intention underlying the statutory mandate to allow displaced allottees the economic benefit of transferring their allotments to other farms owned by them, has upheld an administrative regulation, pur-

suant to which the question of economic benefit to the displaced farmer is totally ignored solely because some other person shares the economic benefit derived from an allotment transfer.

The decision sought to be reviewed thus affects the right of a farmer producing cotton, corn, tobacco, wheat, rice or peanuts, necessarily pursuant to an allotment, to derive the same benefit from such allotment when his land is taken by eminent domain as he could derive from the allotment when attached to his original farm land.

In upholding the validity of Amendment 11, the court below properly determined that the purpose of Congress in enacting 7 U.S.C., § 1378, was to alleviate the hardship caused a farmer by loss of his land (Appendix A, *infra,* p. A8). However, the court was in error in adopting the respondents' view that the Congress intended that a displaced allottee's benefit under an "eminent domain allotment" must be less than the benefit which he enjoyed under his regular allotment prior to condemnation. The court below misconceived the purpose and effect of the transfers involved in this case, and being, perhaps, overzealous to protect the displaced farmers from loss of their allotments "by sale" to the Chandlers has, by upholding the cancellation of the allotments, totally removed all economic benefit of the allotments from the displaced farmers.

Under the Act, a farmer having an allotment assigned to his land is free to sell, lease or give away, *inter vivos* or by testament, such land ***together with its assigned allotments.*** His purpose in disposing of the land and allotment is not evaluated by the Depart-

ment, nor is the source of the transferee's title to the land evaluated by the Department. The transferee obtains the benefit of the allotment irrespective of whether he acquired title to the land by gift, or by payment of adequate or inadequate consideration.

Congress in enacting 7 U.S.C. § 1378 may be said to have permitted an exception to what is regarded by the court below as a "general ban against transfer of allotments apart from the land"—a ban not expressed in the Act (Appendix A, *infra,* p. A8). The exception simply permits a transplantation of an allotment, together with its privileges and obligations, to other farms owned by a displaced farmer. Neither the statute or its legislative history indicates any intention on the part of Congress to impose conditions or restrictions upon a farmer having an allotment transferred pursuant to 7 U.S.C. § 1378 beyond those imposed upon him during his enjoyment, prior to condemnation, of a regular allotment.

Amendment 11, as construed by the court below, requires cancellation of the displaced farmers' allotments because the Department reasonably believed that, contrary to the direct evidence of record, the displaced farmers were not required to pay the Chandlers the purchase price of the land (Appendix A, *infra,* pp. A14-17). Coupled with this determination is the court's conclusion that Amendment 11 requires vitiation of a displaced farmer's allotments if the transfer entails benefit to a person other than himself (Appendix A, *infra,* p. A8).

It is inescapable that as construed by the court below the holder of a transferred allotment no longer retains the full rights he possessed under the allotment prior to condemnation of his land. Under the

allotment, prior to condemnation, he would clearly have the right to give his land, with the allotment, to anyone of his choosing or lease his land, with the allotment to anyone of his choosing at a minimal or, indeed, free rental. Any disposition of his land to another, for an adequate or inadequate consideration, in fee simple or for a term of years, would be a permissible disposition of the allotment and would entail some benefit to another.

By upholding the right of the Secretary to impose these additional restrictions upon displaced allottees, the court below has acknowledged a power in the Secretary to detract from rights granted all farmers under allotment by Congress and, in this case, totally to deprive the displaced farmers of their allotments.

CONCLUSION

The decision below, if allowed to continue, permits the Secretary of Agriculture to detract from rights granted by Congress to farmers under allotment, to the direct economic detriment of any such farmer who sustains a loss of his land by virtue of governmental exercise of the power of eminent domain. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted.

ASHLEY SELLERS
JOHN D. CONNER
GEORGE C. DAVIS
1625 K Street, N.W.
Washington, D. C. 20006
Counsel for Petitioners

MAURICE R. BULLOCK
P. O. Box 1726
Midland, Texas 79701
Of Counsel